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20 **IN THE UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**
22 **SAN JOSE DIVISION**

23 TEVA PHARMACEUTICALS USA, INC.,

24 Plaintiff,

25 v.

26 CORCEPT THERAPEUTICS, INC., AND
27 OPTIME CARE INC.,

28 Defendants.

Case No. 5:24-cv-03567-BLF

29 **STIPULATED ORDER RE:**
30 **DISCOVERY OF ELECTRONICALLY**
31 **STORED INFORMATION**

32 Judge: Honorable Beth Labson Freeman

1 **A. PURPOSE**

2 This ESI Protocol Order (“Order”) will govern discovery of electronically stored information
3 (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines
4 for the Discovery of Electronically Stored Information, and any other applicable orders and rules.

5 **B. COOPERATION**

6 The Parties are aware of the importance the Court places on cooperation and commit to
7 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the
8 Discovery of ESI.

9 **C. LIAISON**

10 The Parties have identified liaisons to each other who are and will be knowledgeable about
11 and responsible for discussing their respective ESI. Each e-discovery liaison will be, or have access
12 to those who are, knowledgeable about the technical aspects of e-discovery, including the location,
13 nature, accessibility, format, collection, search methodologies, and production of ESI in this matter.
14 The Parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes
15 without court intervention.

16 **D. PRESERVATION**

17 The Parties have discussed their preservation obligations and needs and agree that
18 preservation of potentially relevant ESI will be reasonable and proportionate. The Parties agree the
19 following sources of ESI are not reasonably accessible and need not be preserved, collected,
20 processed, reviewed, and/or produced, absent specific Court order to the contrary: (1) deleted data,
21 instant messages that have not been subject to retention, or fragmented or otherwise compromised
22 data only retrieved by forensics; (2) random access memory, temporary files, or other ephemeral data
23 that are difficult to preserve without disabling the operation system; (3) online data such as temporary
24 internet files, history, cache, cookies, and the like; (4) server, system, and/or network logs; (5) data
25 from systems no longer in use that cannot reasonably be accessed; and/or (6) backup and/or disaster
26 recovery tapes or files.

27

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1 **E. SEARCH**2 **1. Search Methodology:**

3 a. The Parties agree to take reasonable and good faith steps to identify, review,
 4 and produce documents responsive to the propounded discovery, the
 5 propounded discovery as modified by the Parties' agreements following meet-
 6 and-confers, or Court order (as may be applicable). Except as to matters
 7 specifically addressed herein, nothing in this Order will narrow or limit the
 8 Parties' respective discovery obligations under the Federal Rules of Civil
 9 Procedure.

10 b. The Parties will meet and confer in good faith regarding document custodians
 11 and any reasonably accessible and proportional non-custodial document
 12 sources (*e.g.*, centralized document sources other than an individual document
 13 custodian's files, including sources of structured data) that are most likely to
 14 have non-duplicative information and/or documents responsive to an agreed-
 15 upon or Court-ordered scope of document requests.

16 c. If, after the Parties identify document custodians, a Requesting Party believes
 17 that additional document custodians or document sources should be added,
 18 then the Requesting Party shall advise the Producing Party in writing of the
 19 proposed additional document custodians or sources and the basis for the
 20 request; provided, however, that such requests will be made promptly and must
 21 not be unduly burdensome. Where such a request is made, the Parties will
 22 meet and confer and attempt in good faith to reach agreement. If the Parties
 23 cannot reach agreement, any dispute may be presented to the Court.

24 d. To locate potentially relevant ESI, the Parties may use search terms, in which
 25 case the Parties will meet and confer in good faith regarding search terms. Any
 26 Party that asserts that a proposed search term is overbroad, unduly
 27 burdensome, or otherwise unreasonable shall produce a report containing
 28 details of hit counts based on that search term within seven (7) days of a request

1 for such a report. If the Parties cannot reach agreement on search terms, either
 2 Party may present such dispute to the Court.

3 e. Nothing in this Order may be construed or interpreted as precluding a
 4 Producing Party from performing a responsiveness review to determine if
 5 documents captured by search terms are in fact relevant to the Requesting
 6 Party's request. Similarly, nothing in this Order may be construed or
 7 interpreted as requiring the production of all documents captured by any search
 8 term if any such document(s) is, in good faith, reasonably deemed not relevant
 9 to the Requesting Party's request or is otherwise privileged or protected from
 10 discovery.¹

11 2. Deduplication:

12 a. A Party is only required to produce a single copy of a responsive document.
 13 Parties are permitted to deduplicate stand-alone documents or entire document
 14 families: vertically within each document custodian, and/or horizontally (also
 15 referred to as globally) across document custodians.

16 b. Attachments to emails will not be eliminated from their parent emails. Where
 17 a standalone document is an exact duplicate of an email attachment, the email
 18 attachment must be produced, and the standalone document may be
 19 deduplicated.

20 3. Responsiveness: The fact that an electronic file is returned by application of the search
 21 queries and the protocols used herein does not mean that such file or document is responsive to any
 22 propounded discovery request or is otherwise discoverable in this litigation. However, if one
 23 document in a document family is determined to be responsive, then the entire family must—subject
 24

25 ¹ The Producing Party may produce emails or documents that contain (or appear to contain)
 26 hyperlinks to other documents. The Producing Party is not required to identify and produce
 27 documents that are the target of such links. If the Requesting Party believes such a target document
 28 is responsive, it may submit a reasonable request to the Producing Party to investigate the target
 document(s). The Producing Party shall then make reasonable efforts to respond to the Producing
 Party's request. If the Parties cannot reach agreement with respect to the Requesting Party's
 hyperlink request, any such dispute may be presented to the Court.

1 to any claim of attorney-client privilege, work product doctrine, and/or any other applicable privilege
 2 or protection—be produced irrespective of whether other documents in that family are
 3 responsive/relevant.

4 4. Use of Technology Assisted Review (“TAR”): Nothing in this Order may be construed
 5 or interpreted as precluding a Producing Party from using TAR to fulfill its document production
 6 obligations. If a Producing Party elects to use TAR as a means of culling or otherwise limiting the
 7 volume of information to be reviewed for responsiveness, the Producing Party shall promptly notify
 8 the Requesting Party of such use. If the Requesting Party objects to the Producing Party’s procedures
 9 for using TAR and the Parties are unable to resolve their dispute after meeting and conferring in good
 10 faith, any dispute may be presented to the Court, with the burden being on the Requesting Party to
 11 explain their objections to the Producing Party’s use of TAR.

12 5. Email Threading: The Parties may use email thread suppression to avoid review of
 13 duplicative information, but their productions must include all messages from the most inclusive
 14 messages identified as responsive.

15 **F. PRODUCTION FORMATS**

16 The Parties agree to produce documents and files in the formats and manner described below.
 17 If particular documents or files warrant a different format, the Parties will cooperate to arrange for
 18 the mutually acceptable production of such documents. The Parties agree not to materially degrade
 19 the searchability of documents as part of the document production process.

20 1. General Provisions: Documents will be produced using a secure file transfer protocol
 21 or similarly secure method (e.g., encrypted hard drive) (“Production Media”). Each piece of
 22 Production Media shall identify a production number corresponding to the production volume (e.g.,
 23 “VOL001,” “VOL002”); volumes should be numbered consecutively. Each piece of Production
 24 Media shall also identify: (a) the Producing Party’s name; (2) the production date; and (3) the Bates
 25 Number range of the materials contained on the Production Media.

26 2. Bates Numbering: All images must be assigned a unique Bates Number that is
 27 sequential within a given document and across the production sets.

1 3. TIFFs: Where practicable, single page Group IV TIFFs should be provided. Each
2 TIFF image will be produced in black and white at 300 (or more) dots per inch and named according
3 to a unique corresponding Bates Number associated with the document, with corresponding multi-
4 page text and necessary load files. Documents containing colors other than black (or shades thereof,
5 such as gray) or white shall be produced in color. Each image will be branded according to the Bates
6 Number and the Designating Party's confidentiality designation (consistent with the confidentiality
7 designations provided in the Parties' Stipulated Protective Order). Original document orientation
8 should be maintained where possible (*i.e.*, portrait to portrait and landscape to landscape). Where the
9 TIFF image is unreadable or has materially degraded the quality of the original, the Requesting Party
10 may request that the Producing Party provide a higher quality TIFF image or the native of the original
11 document. Parties may make reasonable requests for color copies of particular documents on a
12 document-by-document basis where it appears that a document produced in black and white contains
13 color.

14 4. Text Files: Where practicable, a single multi-page text file will be provided for each
15 document, and the filename should match its respective TIFF filename. When possible, the text of
16 native files should be extracted directly from the native file. Text files will not contain the redacted
17 portions of the documents, and OCR text files will be substituted instead of extracted text files for
18 redacted documents.

19 5. OCR Text Files: Where practicable, a commercially acceptable technology for OCR
20 will be used for all redacted documents and scanned documents. OCR text will be provided as a
21 single multi-page text file for each document, and the filename should match its respective TIFF
22 filename. The text files for redacted documents will not contain the redacted portions of the
23 documents. OCR of non-English language files is not required.

24 6. Database Load Files/Cross-Reference Files: Productions will include, in addition to
25 single page TIFFs and Text Files: (a) an ASCII delimited data file (.txt, .dat, or .csv); and (b) an image
26 load file that can be loaded into commercially acceptable production software (*e.g.*, Relativity). Each
27 TIFF in a production must be referenced in the corresponding image load file.

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1 7. Parent-Child and Document Families: Where feasible, parent-child relationships will
2 be maintained in production. In addition, entire document families must be produced, even if only
3 the parent email or an attachment to an email is responsive, except for: (1) junk files (*e.g.*, thumbnails)
4 and non-user-created content routinely excluded during processing; and (2) documents that are
5 withheld on the bases of attorney-client privilege, work product doctrine, and/or any other applicable
6 privilege. However, for documents that are withheld on the bases of attorney-client privilege, work
7 product doctrine, and/or any other applicable privilege, the Producing Party must instead produce a
8 slipsheet indicating that the document has been withheld on such basis. For the avoidance of doubt,
9 document families do not include hyperlinked files (*e.g.*, those that may be present in an email or
10 stand-alone document).

11 8. Metadata Fields and Processing: Each of the metadata and coding fields set forth in
12 Appendix A that can reasonably be extracted will be produced for each document, if such metadata
13 is reasonably available to the Producing Party. Metadata that would reveal the substance underlying
14 redacted portions of Documents need not be produced. The Parties will make reasonable efforts to
15 ensure that metadata fields automatically extracted from the documents are correct; however, the
16 Parties acknowledge that such metadata may not always be accurate and might instead contain
17 irrelevant or incorrect information generated during the collection process.

18 9. Native Files: Spreadsheets (*e.g.*, Microsoft Excel) and presentations (*e.g.*, Microsoft
19 PowerPoint) will be produced in native format unless redacted. If a spreadsheet or presentation needs
20 to be redacted, redactions may be applied: (1) onto the native spreadsheet and produced in native
21 form; or (2) onto an image, or images, of the spreadsheet and/or presentation and produced as a set
22 of TIFF images with OCR text, provided that the document and its content remains legible and
23 reasonably readable. For all documents produced in native format, a TIFF placeholder indicating that
24 the document was provided in native format must accompany the database record. The Parties will
25 make reasonable efforts to ensure that any spreadsheets or presentations that are produced only as
26 TIFF images are formatted so as to be readable. To the extent that they are produced in this action,
27 audio, video, and multi-media files will also be produced in native format. Native format may also
28 be requested for other documents, such as Microsoft Word document containing track changes and/or

1 comments, where the Requesting Party can, in good faith, show that the image does not adequately
 2 capture the full contents of the document.

3 10. System Files: The Parties are not required to produce System Files. “System files”
 4 refer to files attached to emails that: (1) do not contain user-generated content; and (2) are either
 5 empty or incomprehensible, also known as “junk files.” System files may end in file extensions
 6 including, but not limited to: .htm, .bin, .dat, and .txt.

7 **G. PRIVILEGE AND REDACTION LOGS**

8 1. The Parties agree that for documents redacted or withheld from production on the
 9 bases of attorney-client privilege, work product doctrine, and/or any other applicable privilege, the
 10 Producing Party will provide privilege logs. For each document withheld based upon a claim of
 11 privilege, each Party’s privilege log must provide the objective metadata listed below (to the extent
 12 it is reasonably available and does not reflect privileged or protected information), the privilege or
 13 protection being asserted (e.g., attorney-client; attorney work product; joint defense and/or common
 14 interest; etc.), and a description (e.g., “legal advice re patent litigation”), which may be generated
 15 from metadata, but must, in any event, be adequate to ascertain the basis for the asserted privilege.
 16 Attorneys or their staff must be identified on the log with an asterisk (or similar notation).

17 2. Communications with outside counsel or such counsel’s work-product that post-date
 18 June 13, 2024 (the filing date of Teva’s complaint in this action) need not be placed in a privilege
 19 log.

20 3. Objective metadata includes the following fields, as defined in Appendix A to this
 21 Order (to the extent those fields are available for a particular document):

- 22 a. BEGBATES²
- 23 b. ENDBATES
- 24 c. BEGATTACH
- 25 d. ENDATTACH
- 26 e. FILENAME

28 2 A document being entirely withheld may receive an alternative ID rather than a Bates ID.

- 1 f. EMAILSUBJECT
- 2 g. AUTHOR
- 3 h. TO/FROM/CC/BCC
- 4 i. DATETIMESENT
- 5 j. DATETIMERECEIVED
- 6 k. DATETIMECREATED
- 7 l. CUSTODIAN
- 8 m. ALLCUSTODIANS.

9 4. Each Party reserves all rights to challenge the sufficiency of the other Party's privilege
 10 log(s).

11 5. Privilege logs shall be produced within 28 days after each production installment
 12 provided, however, that the Producing Party may request additional time to provide the log(s) and the
 13 Requesting Party shall evaluate any such request in good faith. As an alternative to producing each
 14 privilege log within 28 days after the applicable production installment for that log, the Parties may
 15 agree to exchange interim privilege logs (e.g., a first log on a particular date that covers all
 16 productions made before that date, a second log on a later date that covers all productions between
 17 the first log and the second log, so on and so forth). The Producing Party shall provide its privilege
 18 log in PDF format, which shall be accompanied by a Microsoft Excel copy of the log. The PDF copy
 19 will be the official log of record.

20 6. In the event that a document family contains multiple documents and one or more but
 21 not all of the documents in that family are privileged, then the responsive non-privileged document(s)
 22 must be produced. In that case, the remaining documents in the family must be logged on the
 23 privilege log. However, documents that are privileged only by virtue of being attached to a privileged
 24 communication may be logged as privileged, but a copy of the otherwise unprivileged document shall
 25 be produced a stand-alone document.

26 7. To the extent a document is redacted, rather than withheld in full from document
 27 productions, the following information in the document may be redacted: (i) information withheld on
 28

1 the basis of attorney-client privilege, work product privilege, joint defense and/or common interest
 2 privilege; and/or (ii) information listed in Federal Rule of Civil Procedure 5.2(a).

3 8. Where a Producing Party changes, in whole or in part, the redaction or privilege
 4 designation of a document, the updated document shall be produced with an overlay and load file
 5 indicating the document being replaced. The Producing Party shall, if reasonably possible, assign the
 6 replacement document the same Bates numbers as the document being replaced.

7 **H. MISCELLANEOUS**

8 1. Objections Preserved: Nothing in this Order will be interpreted to require disclosure
 9 of irrelevant information or relevant information protected by the attorney-client privilege, work-
 10 product doctrine, or any other applicable privilege or immunity. All objections as to the relevance,
 11 proportionality, production, discoverability, admissibility, authenticity, and/or confidentiality of ESI
 12 are preserved and reserved by all Parties.

13 2. Costs: Generally, and except as otherwise provided herein, the costs of discovery will
 14 be borne by the Producing Party unless otherwise ordered by the Court.

15 3. Timing: Production of ESI will be in accordance with the applicable Court rules,
 16 schedules, and orders, as well as any agreements by the Parties as to the timing and scope of discovery
 17 (including document production).

18 4. Dispute Procedures: The Parties will make their best efforts to comply with—and
 19 resolve any differences concerning compliance with—this Order. No Party may seek relief from the
 20 Court and/or Magistrate Judge concerning compliance with the Order until it has conferred with the
 21 other Parties to the action or made reasonable efforts to confer with the other Parties. If the Parties
 22 cannot resolve any dispute regarding any discovery right or obligation hereunder without Court
 23 intervention, then any Party may seek relief from the Court and/or Magistrate Judge consistent with
 24 the Court’s Individual Practices, the Magistrate Judge’s Individual Practices, the Federal Rules of
 25 Civil Procedure, and the Northern District of California Local Rules.

26 5. Re-Productions from Other Matters: To the extent any Party re-produces in this action
 27 materials from other cases or matters, nothing in this Order requires material changes or modifications
 28 to those materials—except with the addition of Bates numbering and confidentiality designations

1 specific to this action. To the extent reasonably possible, the prior production materials must be re-
2 produced with at least basic metadata/objective coding (*i.e.*, CUSTODIAN, AUTHOR,
3 DATETIMECREATED, FILENAME, TITLE, DOCEXT). If a Requesting Party raises a reasonable
4 issue regarding the usability or format of such re-produced materials, then the Parties will meet and
5 confer on that issue, attempt to resolve it in good faith, and seek Court intervention only if appropriate.

6 **I. MODIFICATION**

7 This Stipulated Order may be modified by a Stipulated Order of the Parties or by the Court
8 for good cause shown.

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10 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

11 DATED: _____

12 _____
13 Honorable Beth Labson Freeman
United States District Judge

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APPENDIX A: METADATA AND CODING FIELDS

<u>Field Name</u>	<u>Field Description</u>
BEGBATES	Beginning Bates number as stamped on the production image
ENDBATES	Ending Bates number as stamped on the production image
BEGATTACH	First production Bates number of the first document in a family
ENDATTACH	Last production Bates number of the last document in a family
PRODUCTIONVOLUME	Name of the production volume
CUSTODIAN	Individual from whom the document originated
ALLCUSTODIAN(S)	Individual(s) whose documents de-duplicated out
CONFIDENTIALITY	Confidentiality designation assigned to document
HASHVALUE	MD5 hash value of document
AUTHOR	Any value populated in the Author field of the document properties (Edoc or attachment only)
DATETIMECREATED	Date and time the document was created (format: MM/DD/YYYY HH:MM:SS) (Edoc or attachment only)
DATETIMEMODIFIED	Date and time when document was last modified according to filesystem information (format: MM/DD/YYYY HH:MM:SS) (Edoc or attachment only)
FROM	The name and email address of the sender of the email
TO	All recipients that were included on the "To" line of the email
CC	All recipients that were included on the "CC" line of the email
BCC	All recipients that were included on the "BCC" line of the email

<u>Field Name</u>	<u>Field Description</u>
DATETIMERECEIVED	Date and time email was received (format: MM/DD/YYYY HH:MM:SS)
DATETIMESENT	Date and time email was sent (format: MM/DD/YYYY HH:MM:SS)
FILESIZE	The original file size of the produced document
REDACTIONS	Indicate Yes if document redacted
NATIVEFILEPATH	Native File Link (Native Files only)
TEXTFILEPATH	Path to extracted text/OCR file for document
EMAIL THREAD ID	Unique identification number that permits threading of email conversations. For instance, unique MS Outlook identification number (“PR_CONVERSATION_INDEX”) is 22 bytes in length, followed by zero or more child blocks each 5 bytes in length, that facilitates use of email threading (Microsoft application documents only)
EMAILSUBJECT	Subject line of email
TIMEZONEUSED	Time zone used to standardize date/time during document processing
FILENAME	File name of the edoc or email
TITLE	Any value populated in the Title field of the document properties
SUBJECT	Any value populated in the Subject field of the document properties
DOCEXT	File extension of the document
WITHHELD PLACEHOLDER	To the extent a document is fully withheld (on the basis of privilege or otherwise), this field must be populated with a “Y”

1 Dated: February 18, 2025

Respectfully submitted,

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By: /s/ Michael Shipley

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